

TEMPORARY ROAD CLOSING AGREEMENT

This Agreement is entered into by and between GIBSON COUNTY, INDIANA, by and through its Board of Commissioners (the "County") and BLACK BEAUTY COAL COMPANY, LLC (herein "Black Beauty").

WITNESSETH:

In consideration of the mutual covenants and promises contained herein, the sufficiency of which consideration is hereby acknowledged, the parties agree as follows:

1. **Road Closing.** The County hereby consents to the temporary closing of those portions of the County roads (the "Closed Roads") identified as follows:

CR350S - commencing at the intersection with CR1150E and running thence east 2,640 feet, more or less (.5 miles) to its intersection with CR1200E

and as depicted on Exhibit A, attached hereto and incorporated herein.

2. **Term of Road Closing.** Black Beauty shall give the County fifteen (15) days notice prior to the closure of each road. The period of the closings shall commence from the date each road has closed and continue therefrom for the respective terms set forth below:

<u>Road</u>	<u>Closure Time</u>
CR350S	5 years (with extensions in accordance with Ordinance No. 2008-1, part 7)

3. **Consent to Mining Along or Under Road.** The County acknowledges that Black Beauty desires and intends to mine through and excavate, either by strip or auger methods, that portion of the Closed Roads which will be closed under the terms of this Agreement. The County consents to the mining of the portions of the Closed Roads designated above; provided, however, such consent is given with the express understanding that the County makes no representations or warranties to Black Beauty regarding any claim or interest of the County to the area along the roadway or subsurface rights contained within or along the roadway. To the extent the County has any right or interest to the area along any roadway subsurface rights, the County grants to Black Beauty a right to mine and extract coal. Black Beauty herein assumes the full risk and liability for any claims and damages arising from the extraction of subsurface rights belonging to the adjacent property owners along said roads.

4. **Restoration and Repair.** Within sixty (60) days after Black Beauty discontinues its operations and ceases use of the Closed Roads, but in no event later than the termination of this Agreement, Black Beauty shall restore the Closed Roads according to the standards and specifications set forth in Gibson County Ordinance 2008-1 for a gravel road, which is the present surface thereof, provided further that such standards and specifications shall not require Black Beauty to lay an asphalt surface to the portions of the roads closed hereby. See attached pre-mining profile.

5. **Alternate Routes.** Alternate route will be available to the general public during the period of the closure as follows:

To the north/northwest:	CR1150E
To the west:	CR350S west of CR1150E
To the north/ northeast:	CR1200E
To the east:	CR350S east of CR1200E
To the south/ southeast & southwest:	CR1200E/CR350S/ CR1250E/ CR450S

In addition, Black Beauty shall construct a temporary fair weather road for use by the area farmers who conduct farming operations to the south/ southeast of the temporary road closure location. Said road shall be constructed commencing on the east side of CR1200E(Jackson St) and run thence eastward to a point where it intersects with our existing haul truck road. Another alternate route that will be made available is CR1125E between CR350S and CR450S in Section 36, T2S, R9W. This section of roadway is officially temporarily closed under an agreement that was approved by the Gibson County Board of Commissioners on or about July 21, 1997. Said routes will be made available only to area farmers for the purpose of transporting farming equipment to and from their farming properties to the south/ southeast of CR350S. Signs will be posted at the intersection of these temporary roads informing the public that the roadways are for area farming usage only. Said roadways will be closed after the temporarily closed section of herein referenced CR350S is re-opened for public utilization.

6. **Signage.** Upon the physical closing of the Closed Road, Black Beauty will be responsible for all signage and traffic control. This will include, but is not limited to any stop signs, and all other regulatory and advisory signs.

7. **Bond.** Black Beauty shall deposit and maintain forthwith with the auditor of the County, its surety bonds from an insurance company rated excellent "A" or better by best insurance reports or letter of credit in the amount of Twenty-five Thousand Dollars (\$25,000.00) per mile/pro rata, for the Closed Road, to secure the performance of this Agreement by Black Beauty. This bond shall be maintained for a period of two (2) years after restoration of the Closed Roads, unless such bond is terminated sooner by the written consent of the County. Should Black Beauty fail to comply with any of the terms of this Agreement, the County shall have the right to make claim on such surety bond to recover any costs, damages, or expenses arising from breach of this Agreement or enforcement of the same, including reasonable attorneys' fees and costs. The respective bond amounts are as follows, to wit:

Road
CR350S

Bond Amount
\$12,500

Total \$12,500

8. **Compensation.** In accordance with Gibson County Ordinance No. 2008-1, subpart 4.e., Black Beauty shall pay to Gibson County Highway Department Fund 0702 General and Undistributed at the time of execution of this agreement the sum of Ten Thousand Dollars(\$10,000.00) per mile(pro-rata per mile) and pro-rata per remainder of calendar year. Thereafter, Black Beauty shall pay to the Gibson County Highway Department Fund 0702 General and Undistributed the sum of Ten Thousand Dollars(\$10,000.00) per pro-rata mile each year the road is closed, to be paid the first week of January of each year until said road is open for use by the public.

9. **Indemnification and Liability Insurance.** By the acceptance of this agreement, Black Beauty agrees to hold the County of Gibson, the Commissioners and any and all County employees or representatives harmless and further agrees to indemnify the Commissioners, said County and/or its employees and representatives against any and all claims actions at law, litigation expenses, judgments and verdicts that should arise out of Black Beauty's: (1.) Closing of said roads, (2.) Use by anyone, any of the closed roads prior to their being returned to County control, (3.) The activities by any person, firm or other corporation for purposes associated with the company's coal mining activities.

During the term or renewal term of this Agreement, Black Beauty shall maintain and keep in full force and affect a policy of liability insurance with limits of at least One Million Dollars (\$1,000,000) per incident and supply Gibson County with a Certificate of Insurance upon request.

10. **Remedies Upon Violation of this Agreement.** In addition or in lieu of making claim against the bond, in the event of a material breach of this Agreement, the County may give written notice to Black Beauty setting forth the nature of the breach, and requesting that such breach be cured within a reasonable time set forth in such notice. If Black Beauty fails to affect such cure within the time designated in the notice, the County, at its option, may terminate this Agreement and pursue all legal and equitable remedies available to it. These remedies are not intended to be exclusive of one another. In the event of such breach, the County may recover reasonable attorney fees and costs incurred in the enforcement of any covenant, term or condition of this Agreement.

11. **Notices.** Any notices, waivers, and other communications under this Agreement shall be in writing, and shall be sufficient as given if mailed, by certified mail, to Gibson County Board of Commissioners, Courthouse Annex, 225 North Hart Street, Princeton, Indiana 47670 and to Black Beauty at 7100 Eagle Crest Blvd, Evansville, Indiana 47715.

12. **Entire Agreement.** This Agreement is the exclusive statement of the Agreement of the parties with respect to its subject matter and supersedes all prior agreements, negotiations, representations, proposals and awards, written or oral, relating to its subject matter. The terms of this Agreement may be modified only by the written consent of both parties.

13. **Effect of Agreement.** This Agreement shall not be construed to amend or modify agreements related to other County roads which have previously been into by and between the parties.

14. **Authority to Execute Agreement.** Black Beauty herein represents and warrants that the person designated below is a duly appointed officer of Black Beauty and is fully empowered to execute this Agreement for and on behalf of Black Beauty pursuant to the document by which Black Beauty is established.

Dated: this 20th day of January, 2009.

BOARD OF COMMISSIONERS OF
GIBSON COUNTY, INDIANA

Robert D. Townsend
Robert D. Townsend

Don L. Whitehead
Don L. Whitehead

Gerald Bledsoe
Gerald Bledsoe

ATTEST

Mary B. Key
Gibson County Auditor

BLACK BEAUTY COAL COMPANY, LLC

Charles A. Burgraf
Authorized Officer

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